

Order

Michigan Supreme Court
Lansing, Michigan

January 13, 2011

Robert P. Young, Jr.,
Chief Justice

141692 & (81)

Michael F. Cavanagh
Marilyn Kelly
Maura D. Corrigan
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly,
Justices

CROWN ENTERPRISES INC.,
Plaintiff-Appellant,

v

SC: 141692
COA: 286525
Wayne CC: 05-519614-CZ

CITY OF ROMULUS,
Defendant-Appellee,

and

AMERICAN DIESEL TRUCK REPAIR INC.,
RUBEN CHACON, and JUAN MOLINA,
Third Party Defendants.

On order of the Court, the motion for miscellaneous relief is GRANTED. The application for leave to appeal the May 20, 2010 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals on the issue of the abandonment of an easement for the reasons stated in the Court of Appeals concurring opinion and on the issue of the overburdening of a servient estate. While the Court of Appeals was correct that the plaintiff's use of the easement overburdened the servient estate, it provided no support for the proposition that such an act results in an automatic extinguishing of the easement right when the owner of the servient estate is not the complaining party. Therefore, we REINSTATE the decision of the Wayne Circuit Court that the plaintiff had an easement right in Harrison Road, that the defendant interfered with that right without notice and an opportunity to be heard and that, as a consequence, the plaintiff's due process rights were violated. In addition, we REMAND this case to the Court of Appeals for consideration of whether the award of attorney fees under 42 USC 1988 was reasonable under all of the circumstances of this case. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



s0112

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 13, 2011

Corbin R. Davis

Clerk